

REMARKS

This Amendment is in response to the Final Office Action mailed December 21, 2007. The specification, which has been objected to, has been amended. Claim 10, which has been objected to under 37 C.F.R. § 1.75(c), has been canceled without prejudice. Claims 3, 4, 6 and 8, which have been rejected under 35 U.S.C. § 103(a), are pending.

In paragraph 2 of the Office Action, informalities found on page 10, line 1 in the specification have been objected to. The specification has been amended as suggested by the Examiner, and certain other informalities on page 10 have been corrected as indicated in the Amendments to the Specification. The Examiner is respectfully requested to withdraw this objection.

In paragraphs 3 and 4 of the Office Action, claim 10 has been objected to under 37 C.F.R. § 1.75(c) as being an improper dependent claim. Accordingly, Applicant has canceled claim 10.

In paragraphs 5 and 6 of the Office Action, claims 4, 6, 8 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,796,814 to Brajal et al. (Brajal) in view of Applicant's admitted prior art (AAPA), and in further view of U.S. Patent No. 5,909,465 to Bottomley et al. (Bottomley). Applicant respectfully traverses these rejections.

Applicant incorporates by reference the arguments made in the Response to the Office Action filed October 11, 2007. In particular, Bottomley teaches a method in apparatus for choosing forward or reverse demodulation of a time division multiple access

(TDMA) signal "by processing blocks of symbols and deciding which direction to continue demodulation based upon a figure of merit." Bottomley, col. 5, ll. 25-27. In sum, Bottomley teaches between choosing forward or reverse Viterbi demodulation of a TDMA signal based on this figure of merit. In contrast, Brajal and Applicant's admitted prior art (AAPA) teach demodulation of a code division multiple access (CDMA) signal by an equalizing receiver and conventional RAKE receiver respectively. As well known by one skilled in the art, TDMA demodulation techniques cannot be applied to CDMA signals. Therefore not only would it be improper to combine Brajal and AAPA with Bottomley, such combination would not function. Simply, the demodulation techniques of Brajal, which concern temporal and not code division aspects of the signal, cannot, because of the technical differences between TDMA and CDMA, be incorporated into a CDMA system.

In addition, a *prima facie* case of obviousness requires, among other things, that a reason be shown in the prior art references that would have caused one skilled in the art to make any proposed modification or combination of the references. The last paragraph of the Office Action on page 4 states that "it would have been obvious to someone of ordinary skill in the art, given these references, to combine the demodulation quality selection teachings of Bottomley with the equalization and demodulation teachings of Brajal in view of AAPA in order to provide an equalization and demodulation scheme providing enhanced output quality as spoken of on column 5, lines 23-29 of Bottomley." However, as stated above, Bottomley concerns demodulating TDMA signals, not CDMA signals. The cited portion of Bottomley states that Bottomley "provides a method and apparatus for enhancing the performance of bidirectional digital modulation of digital modulated signals," which does not concern enhancing the performance of CDMA

modulated signals. Therefore, the cited portions of Bottomley do not provide a reason to combine Bottomley with Brajal or AAPA.

The only reason for adding a RAKE receiver to Brajal's equalizing receiver is to meet the features claimed, which is of course, improper and in fact amounts to hindsight reconstruction of the claim. It was the Applicant that determines a RAKE receiver would perform superior to an equalizing receiver when there were fewer mobile units, and that equalization would perform superior when there were many mobile units. Both references are completely silent with respect to utilizing both demodulation techniques, and Bottomley certainly is silent with respect to either CDMA demodulation technique. These facts completely undercut the Office Action's purported reason to combine them. In view of the failure of the Office Action to provide any legally acceptable reason for the recited combination, no *prima facie* case of obviousness has been set forth with regards to claims 3, 6, and 8. Under the current law, "any legal problem known in the field and addressed by the patent can provide a reason for combining the elements in the manner claimed." See *KSR Int'l Co. v. Teleflex* 127 S. Ct. 1727, 1732 (2007). The Office Action fails to provide any valid, legal reason whatsoever for combining these references. Accordingly, claims 3, 6, and 8 are believed to be patentable over the cited art and withdrawal of the rejection of against all the remaining claims is respectfully requested.

Claim 4 depends from claim 3 and includes all the limitations found therein, and is also allowable for at least the same reasons stated in connection with claim 3 above. This claim includes further limitations which, in combination with the limitations of claim 3, are neither disclosed nor suggested in the prior art of record.

Application No. 09/830,752
Amendment dated March 10, 2008
After Final Office Action of December 21, 2007

Docket No.: Y1929.0079

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Dated: April 4, 2008

Respectfully submitted,

By: /Robert G. Gingher/

Robert G. Gingher
Registration No.: 45,755
DICKSTEIN SHAPIRO LLP
1177 Avenue of the Americas
New York, New York 10036-2714
(212) 277-6500
Attorneys for Applicant